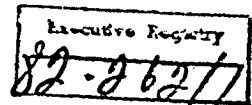




## DEPARTMENT OF STATE

Washington, D.C. 20520

SECRET

April 4, 1982

TO :	OVP	- Mrs. Nancy Bearg Dyke	S/S 8209185
	NSC	- Mr. Michael Wheeler	S/S 8209186
	Commerce ✓	- Ms. Jean Jones	S/S 8209187
	✓ Defense	- COL John Stanford	S/S 8209188
	Energy	- Mr. William Vitale	S/S 8209189
	Interior	- Mr. Kent Larsen	S/S 8209190
	JCS	- LTC Edward Bucknell	S/S 8209191
	Justice	- Mr. F. Henry Habicht	S/S 8209192
	Labor ✓	- Mr. Robert Searby	S/S 8209193
	✓ Transportation	- Mrs. Katherine Anderson	S/S 8209194
	✓ Treasury	- Mr. David Pickford	S/S 8209195
	UNA	- Amb. Harvey Feldman	S/S 8209196

SUBJECT: Law of the Sea: Mid-Session Assessment

The Senior Interdepartmental Group on Law of the Sea will meet on Monday, April 5 at 5:30 p.m. in room 7219 at the Department of State under the chairmanship of Under Secretary Buckley. Attached is a paper setting forth the assessment of the Chairman of the US LOS Delegation on the state of the negotiations, and prospects for meeting the President's objectives.

*G. Strickler*  
L. Paul Bremer, III *for*  
Executive Secretary

## Attachments:

1. Assessment of the Chairman of the LOS Delegation on the State of the Negotiations and Prospects for Meeting the President's Objectives
2. Group of 11 Papers
3. Instructions for the US Delegation to the Eleventh Session of the Third UN Conference on the Law of the Sea (with three attachments)

APR 8 1982

ER

State Dept. review completed

SECRET  
GDS 4/4/88

Drafted by: OES:OEs<sup>2</sup>kin:mw

Clearances:

OES:JMalone<sup>My</sup>

EB:MCalingaert<sup>MC</sup> (clears except for section on  
production limitation)

L:EVERVILLE<sup>EV</sup>

T:WSalmon<sup>acs</sup>

SECRET

ASSESSMENT OF THE CHAIRMAN OF THE LOS DELEGATION  
ON THE STATE OF THE NEGOTIATIONS AND PROSPECTS FOR MEETING  
THE PRESIDENT'S OBJECTIVES

The purpose of the meeting is to review the status of the negotiations and the Chairman's assessment as to the prospects for achieving the President's objectives and fulfilling the delegation's instructions. The Chairman considers that it may be possible to achieve all of the President's objectives, but that it will not be possible to fulfill certain detailed delegation instructions. The SIG should note the Chairman's assessment that the complete elimination of the production limitation and the U.S. proposal for affirmative voting are not negotiable and that continued pursuit of these proposals could damage our ability to achieve the President's objectives.

The Law of the Sea Conference has now reached a critical stage. Substantive negotiations with the G-77 will only begin if the U.S. shows a more flexible approach. We have until April 23 to complete the principal parts of these negotiations.

The U.S. proposals included in the "green book of amendments" have served their purpose very well by acquainting the Conference with our requirements and accomplishing for us several changes necessary to our further participation. At this point we have achieved the maximum usefulness from the "green book". We now must be prepared to negotiate.

The G 77 have in essence agreed to commence negotiations with us subject to our capacity to convince them that:

- our bottom line is closer to the Group of 11 papers than to the "green book" (G-11 papers attached at Appendix 2)

- their acceptance of the U.S. bottom line will bring a substantial probability of U.S. signature of the Convention in 1982

- our bottom line is saleable by the G-77 leadership to the entire group within the next two weeks

The delegation instructions interpret the President's six objectives sufficiently narrowly so as to inhibit the prospects for any continued negotiations with the G-77. However, if the delegation is authorized to construe the President's objectives as set forth in this memorandum it appears that the prospects for successful negotiation will be materially enhanced.

SECRET

GDS 4/4/88 (Malone, James)

SECRET

-2-

It is the view of the Chairman of the Delegation that it will not be possible to delay the adoption of the Convention at this session of the Conference unless the Conference believes that it is near final negotiations which will attract U.S. signature). Also, unless the U.S. shows more flexibility than it can now do our allies may withdraw their lukewarm support for our effort and could become quite reluctant to sign the reciprocating states agreement for fear of criticism that they helped the U.S. to sabotage the conference and pave the way for a "mini-treaty". Our allies will be in a particularly awkward position because the so-called "PIP Resolution" now goes quite far toward providing broad approval for the reciprocating states agreement provided it is transitional to a comprehensive treaty.

Appendix 1 sets forth the view of the Chairman of the Delegation on:

- the adequacy of the G-77 proposals;
- the extent to which improvements or additions can be made;
- and the specific areas in which satisfaction of the delegation's instructions now appear impossible.

SECRET

APPENDIX 1

TECHNOLGY TRANSFER

After considerable consultation with industry and informed patent experts within and outside of Government, it is the view of the Chairman that the G-11 proposals, with certain relatively minor amendments, can only in a most strained way be construed to require the mandatory transfer of privately owned technology. The Article as we could finally expect to negotiate it would only require that technology be made available for sale to the Enterprise if: a) used by the operator; b) the operator is legally entitled to transfer it; c) the operator makes it available to any other party; and d) the terms and conditions are freely negotiated. (The operator may not, however, impose conditions more onerous than those imposed on the sale to a third party.) Finally, there is no relationship between the operator's right to obtain a contract from the Seabed Authority or to carry out his contract in the event the technology sale does not occur or ends in dispute.

10/10/73  
OK

THE ACCESS SYSTEM -- AWARD OF CONTRACTS

The G-11 proposal is a fully workable access system which fulfills the President's objectives as expressed in subparagraphs (b) and (c) of NSDD-20 and reduces the difficulties in the negotiation of the Council decision making system. It adopts virtually all of the U.S.-proposal in the "green book" except for the voting majority needed to reject an applicant, the qualifications for membership on the Legal and Technical Commission and its composition. If the composition and qualifications issue could be remedied, the voting question would not be considered a serious problem. The Chairman believes these additional changes are negotiable.

1/2

POWERS OF THE ASSEMBLY AND SEPARATION OF POWERS

The G-11 proposal is a duplicate of the U.S. proposal. It limits and reduces the power of the Assembly. If it is coupled with satisfactory Council composition, powers, and functions, it would greatly reduce the role of the one-nation, one-vote Assembly thus establishing an institution that is controlled in a manner that reflects the economic and political interests represented. It sets a desirable precedent for global institutions and should alleviate or eliminate a key Capitol Hill criticism of the Convention.

OK

SECRET

## THE REVIEW CONFERENCE AND THE ADOPTION OF AMENDMENTS TO THE TREATY

The G-11 proposal does not accommodate the most essential U.S. requirement which is the avoidance of amendments being adopted without the advice and consent of the Senate. However the G-11 proposal does move in our direction in some very important ways and the Chairman believes that we can successfully negotiate the additional necessary protections.

## GRANDFATHER RIGHTS (PREPARATORY INVESTMENT PROTECTION-PIP)

The G-11 proposal on this matter has now become a proposal of the President of the Conference. While it moves a long way toward meeting our requirements and could serve as a basis for negotiation, it contains serious defects which would need to be corrected. On the plus side, it achieves a number of vital U.S. objectives. First, it endorses the approach and timing of the Reciprocating States Agreement -- thus giving the RSA political approbation and hopefully making it much easier for France and Japan to join at an early date. Second, it guarantees access for all U.S. companies who have already made substantial investments. Third, it requires the Seabed Authority to issue a contract for exploration and exploitation as soon as the Convention enters into force without the exercise of discretion. Fourth, it could allow for at least nine PIP operators to include the four existing consortia, Japan's national mining project, the USSR, the French project and one each for Brazil and India. In addition, since the so-called "banking system" would apply, nine additional sites would be banked for the Enterprise.

This is important because all economic indicators point to a very slow beginning for seabed mining with very slow growth. The eighteen mine sites provided for under the PIP Resolution may be all that can be absorbed in world metal markets for the next 30-40 years or longer. In short, one of our primary objectives -- guaranteed access to strategic minerals -- may, in practice, essentially result from the PIP Resolution alone.

At the same time, we must recognize the inadequacies of the PIP Resolution. The main defect -- and one it will be difficult, but not impossible, to overcome -- is that it places the Soviet Union, potential LDC miners (e.g., Brazil and India) and possibly Japan on the same footing as the pioneer consortia. Further, it contains a number of provisions inconsistent with our domestic legislation, and the RSA -- one site per applicant, full banking of sites, prohibition on exploitation, mine-site

size limitation and expiration of PIP rights if the Convention does not enter into force within five years. The solution of these defects will not, of course, resolve all problems we have with the Treaty.

#### PRODUCTION POLICIES OF THE AUTHORITY

The G-11 paper (in its proposed change to draft Art. 150) only hints at a possibility of re-orienting the Authority's production policies toward fostering production. Nevertheless, considering that this proposal comes from a group of countries which include the world's largest nickel producer, it is a sign that more can be done. Thus the delegation believes that additional efforts can and should be made to secure a treaty provision which would require the Authority to favor production whenever the treaty provisions create ambiguity.

#### PRODUCTION LIMITATION

The G-11 papers do not offer any proposal on this subject. The U.S. instructions and the "green book" propose the elimination of the production limit in the treaty. It is the assessment of the Chairman that elimination cannot be achieved. It is even unlikely that any significant change can be made to the production ceiling. (However, in the Guidelines for Seeking Improvements in the Draft Convention para 2 provides for "... elimination or relaxation of ... production limitation. ...") The U.S. delegation may be able to make some progress on this issue by implying that if all else is satisfactory in the final treaty package this issue may not be a stumbling block. If we follow this course, toward the end of the negotiation we may be able to get some additional concessions by making them the price of final agreement. In order to get into the negotiation at this stage, however, it will be necessary in the judgement of the Chairman to indicate to influential G-77 leaders that we will not insist on the complete elimination of the production ceiling.

#### BENEFIT SHARING FOR LIBERATION MOVEMENTS

The G-11 papers do not address this point because it is the widespread view at the Conference, including the President of the Conference, that the present text contains a satisfactory solution to the U.S. problem. The Chairman considers that the present text will be adequate if the U.S. is guaranteed a seat on the Council, since the present text provides that benefits can be paid only pursuant to rules and regulations and any member of the Council can veto the rules and regulations. The current U.S. affirmative voting proposals would change the Council voting system change so as to make the adoption of rules and regulations easier and, in doing so, would of

SECRET

~~SECRET~~

-4-

course give up the veto in the present text. Under this proposal, the U.S. would have to insist on the elimination of the reference to benefit sharing for liberation movements.

#### COUNCIL COMPOSITION

The G-11 papers, in substance, provide for a guaranteed seat for the U.S. and enhanced protection for our allies. Moreover, our allies appear to believe that in practice their seats will be guaranteed anyway. For this reason they have put the U.S. in a somewhat awkward position -- insisting on guaranteed seats for others who do not insist themselves. Nevertheless the Chairman believes that we should continue to make efforts to obtain guaranteed seats for the western allies; however, the delegation might want to further address this situation at a later point if our allies will not support us.

It should be understood that the guaranteed U.S. seat is accomplished by inserting a formula -- the world's largest consumer. The proposal does not designate the U.S. by name. Nevertheless the Chairman believes this solution appears to be adequate for the foreseeable future.

#### COUNCIL DECISION-MAKING

The G-11 papers do virtually nothing on this issue to accommodate stated U.S. requirements. The USSR is fighting on every front possible at the Conference to prevent us from renegotiating any of our concerns in seabed mining because they fear that we will obtain changes to the decision-making article which would give us either blocking power not available to the USSR or give us the power to adopt decisions without reliance on the USSR while they would not have equivalent power. Our instructions make it impossible to meet this overriding USSR concern and they are making it impossible for us to successfully negotiate our objectives at the Conference.

In this stalemate the Chairman has reexamined more closely the need for all elements of our instructions on Council voting and considers that we must pursue somewhat less comprehensive solutions if we are to achieve the President's objectives.

Specifically it is proposed that the U.S. explore first with the USSR and then with the G-77 the following:

a) a voting system in the Preparatory Commission for the adoption of rules and regulations which would give significant influence to the sponsoring states of those who are given

~~SECRET~~



grandfather rights under the PIP Resolution.

b) a chambered voting system in the Council for blocking power which would provide, as in the "green book," that a specified group of important decisions be made by a three-fourths majority of the Council which majority would also have to include a majority in each of the special interest categories of the Council. In addition, to meet the concern of the USSR, we would also require a majority of each of the regional groups represented in the Council

c) retention of the present consensus voting formula for the adoption and amendment of rules and regulations and the present text of Article 308 (4) providing for provisional application of the initial rules and regulations promulgated by the Preparatory Commission pending adoption or amendment by the Council.

Analysis: The net impact of these proposals would be to give easy blocking power to virtually every group on the Council thus ensuring that virtually all decisions of the Council are the product of negotiation. At the same time we would have a relatively easier time getting the first set of rules and regulations adopted by doing it in the Preparatory Commission under special voting rules. In the judgement of the Chairman such a voting system would adequately fulfill the President's objectives, particularly when seen in the context of other changes to the powers of the Assembly, the separation of powers, and the contract approval system.

#### FINANCIAL CONTROL OF THE ENTERPRISE

The essence of the U.S. objective is to gain some control over terms and conditions of the financing of the Enterprise and over the Enterprise itself if it is in danger of financial failure so as to enable its principal creditors to protect their assets. This issue is politically sensitive at the Conference and not on the list of the President's objectives (only in 3(m) of the Instruction). Protections may also be found in the present text to the extent these matters will be specifically covered in the rules and regulations over which we have a veto. In the judgement of the Chairman, it may not worth trading significant negotiating leverage to achieve specific provisions on this issue.

dc

#### AVOIDANCE OF MONOPOLY POWERS BY THE ENTERPRISE

The treaty gives the Enterprise a number of advantages not available to other operators. Taken together, these tend to put the Enterprise in a potentially monopolistic position. The principal U.S. concession in these negotiations, however,

SECRET

~~SECRET~~

-6-

is to leave the parallel system untouched and not to disturb the politically sensitive and symbolically important Enterprise. This puts us in a dilemma. If we attack the advantageous position of the Enterprise we are likely to make further negotiation impossible and ensure the adoption of the draft convention by April 30.

The Chairman believes that it may be possible to negotiate one crucial amendment which would significantly reduce the monopoly powers of the Enterprise without stripping it of its major advantages. We might be able to obtain agreement that if the Enterprise does not use banked mine sites within a stated period of time they would revert to the general pool of unreserved sites--thus avoiding hoarding of prime quality mine sites.

#### OTHER SEABED MINERALS

As now drafted the treaty text does not permit exploration or exploitation of minerals without the adoption of rules and regulations by the Authority. It is clear that enough is known about manganese nodules to allow for the drafting of these rules and regulations immediately. In any case under the PIP Resolution these activities can go on until the Authority adopts its rules and regulations.

Other minerals may turn out to be far more important than nodules, we simply do not know, as yet. Scientific research to date has been limited but has revealed interesting potential.

Developing countries are equally concerned about these minerals because many of them whose economies are not affected by nodule production cannot be sure that other minerals which are eventually discovered and possibly exploited will not adversely affect their own land-based production.

This issue could raise severe treaty ratification problems in the Senate if not satisfactorily resolved, it has received little attention at the Conference and while potentially disruptive may be capable of resolution as a practical problem.

SECRET

SECRET

-7-

There are some possible solutions to the problem which would require special voting rules for the adoption of rules and regulations allowing the U.S. disproportionate influence. Another possibility is to allow only exploration and the equivalent of PIP treatment once the Authority adopts rules and regulations. A third possibility would be a moratorium as is the case in the present draft treaty which would be automatically lifted if the Authority had not adopted rules and regulations by a date certain.

The Chairman believes that too little attention has been given to this subject at the Conference to date to justify any new recommendations at this time. He believes more exploratory discussion is justified while recognizing full well the potential this issue has for affecting our access to new sources of strategic raw materials and ratification of the treaty in the Senate.

SECRET